IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Appeal No.481 of 2000

Reserved on:27.12.2007.

Decided on:December 28, 2007.

State of H.P. **…Appellant.**

VERSUS

Dogra Ram **….Respondent.**

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] Yes

For the Appellant: **Mr M.L.Chauhan, Addl.A.G.**

For the respondent: **Mr N.K.Thakur, Advocate.**

Kuldip Singh, Judge

This appeal has been directed against the judgment dated 8.5.2000 passed by learned Sessions Judge, Chamba in Criminal Appeal No.17 of 1998 acquitting the respondent under Sections 279, 304-A I.P.C. after setting aside judgment dated 19.8.1998 passed by learned Additional Chief Judicial Magistrate, Chamba in Criminal case No.25-II of 1998.

2. The prosecution case, in brief, is that PW-1 Mujaid Hussain made a statement Ext.PW-1/A under Section 154 Cr.P.C. and thereupon F.I.R. Ext.PW-6/A was registered on 21.6.1993 at Police Station, Sadar, Chamba under Sections 279, 304-A I.P.C.

Whether the reporters of the local papers maybe allowed to see the judgment?

3. The further case of the prosecution is that respondent on 21.6.1993 at about 6.05 P.M. was driving truck bearing registration No.HIC-862 and he was coming from Bus Stand side towards main Chowk Chamba Bazar. PW-1 signalled the driver of the truck to turn towards left and accordingly respondent turned the truck in high speed, PW-1 heard the noise from shops on the left side of the Bazar. He noticed that a person was crushed underneath left rear tyres of the truck. PW-1 blew the whistle and respondent stopped the truck. It was found that person, who was crushed by the truck, was Sriniwas. He was immediately shifted to Hospital with the help of others but the injured succumbed to his injuries on reaching the hospital. After completion of investigation, challan was put up in the Court against the respondent under Sections 279, 304-A I.P.C. The notice of accusation was put to respondent who pleaded not guilty and claimed trial. The prosecution examined 9 witnesses. The statement of respondent was recorded under Section 313 Cr.P.C., he pleaded his innocence. The learned Additional Chief Judicial Magistrate convicted and sentenced the respondent under Sections 279, 304-A I.P.C. on 19.8.1998. The respondent filed appeal which has been allowed by learned Sessions Judge on 8.5.2000. Hence, this appeal by the State.

4. I have heard the learned Additional Advocate General for the State, Mr.N.K.Thakur, Advocate for the respondent and gone through the record. The learned Additional Advocate General has submitted that respondent was driving the truck rashly or negligently

and as a result of his rash and negligent driving he crushed Sriniwas under left rear tyres of the truck, who later on died. The learned Additional Chief Judicial Magistrate had rightly convicted and sentenced the respondent but in appeal the learned Sessions Judge has not appreciated the material on record properly and has erred in acquitting the respondent. The prosecution has proved the case beyond reasonable doubt. He, thus, prayed setting of the impugned judgment and restoration of the judgment passed by the learned Additional Chief Judicial Magistrate convicting and sentencing the respondent. The learned counsel for the respondent has supported the impugned judgment. He has submitted that prosecution has miserably failed to prove the guilt of the respondent. The learned Sessions Judge has rightly acquitted the respondent.

5. The prosecution case is that respondent was coming from Bus Stand side towards main Bazar Chamba and at Chowk PW-1 signalled the respondent to take left turn and respondent accordingly took left turn but during this process he crushed Sriniwas under left rear tyres of the truck, who later on died. The question is of rash or negligent driving on the part of the respondent which caused death of Sriniwas. PW-1 in his statement has stated that respondent was driving truck No.HIC-862 on 21.6.1993 at about 6.05 P.M. He was coming from Bus Stand side. He signaled him to take turn towards left. The respondent turned the truck towards left side and drove the truck in high speed. In the meantime, he heard noise from the shops on left side. He saw that a man on the left rear tyres of the truck was

crushed, he blew the whistle and respondent stopped the truck. The injured Sriniwas was taken to the hospital where he died. He made the statement Ext.PW-1/A. In cross examination, he has stated that there is a sharp curve on the Chowk and a truck having speed more than 10 kilometers per hour cannot negotiate that curve. He has stated that when driver took the turn there was no person on the road. PW-2 Kuldip Kumar, PW-3 Dev Raj, PW-4 Dr.Parveen Bhardwaj are formal witnesses. PW-5 Mohan Lal is a shopkeeper but he has not stated the location of his shop. He did not support the prosecution and was declared hostile. In his cross examination also, the prosecution has not extracted anything which is favourable to the prosecution. PW-6 conducted the mechanical examination of the truck and submitted his report. PW-7 has proved F.I.R. Ext.PW-6/A. PW-8 is the Investigating Officer. PW-9 Rai Singh, Inspector, recorded the statement of PW-1 under Section 154 Cr.P.C. Ext.PW-1/A. He prepared the challan.

6. PW-1 has not actually seen how Sriniwas came under the rear left tyres of truck. He has stated that on his signal the respondent turned the truck towards left side and in the meantime he heard noise from the shops. He noticed that a person has come under the left rear tyres of the truck. The prosecution has not examined any independent eye-witness. The accident has taken place at a crowded place. It is not understandable why the prosecution has not associated and examined any witness from the shops where Sriniwas came under the truck. PW-5 Mohan Lal has

not stated in his statement that he is having shop near the place of accident. In any case, he has not supported the prosecution. It is unfortunate that a person has died but prosecution has not placed necessary facts on record to prove the rash or negligent driving on the part of the respondent for causing the accident and death of Sriniwas. PW-1 has stated that when respondent turned the truck at that time there was no person on the road. It appears during the process of turning somehow deceased came in contact with the rear left tyres of the truck and was crushed, but how he came in contact with the tyres that has not been stated by any witness. The left rear tyres of the truck are not visible from the driver side. On the basis of material on record and after scrutinizing the evidence, the learned Sessions Judge has come to a conclusion that in the facts and circumstances of the case rash or negligent driving on the part of the respondent has not been established. If two views are possible from the material on record then this Court, while sitting in appeal, will not take another view. The prosecution has failed to make out any case for interference. Accordingly, the appeal is dismissed. Bail bonds, furnished by the respondent, are discharged.

December 28, 2007. ***(Kuldip Singh), J.***

(soni)